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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

EDDIE LEE HAYES,)	Civil No. 08-3040-CL
)	
Plaintiff,)	ORDER
)	
v.)	
)	
KLAMATH COUNTY PUBLIC)	
DEFENDERS SERVICES, INC.,)	
et al.,)	
)	
Defendants.)	

PANNER, Judge.

On April 15, 2008, Magistrate Judge Clarke filed his Report and Recommendation (docket # 3), recommending sua sponte dismissal of the Complaint. The matter is now before me pursuant to 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b). Although no objections have been timely filed, this court still must review the legal principles *de novo*. See Lorin Corp. v Goto & Co., Ltd., 700 F.2d 1202, 1206 (9th Cir. 1983) (absence of objection does not relieve "district court of its obligation . . . to decide for itself whether the Magistrate's report is correct").

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The Report and Recommendation assumes that Plaintiff Hayes was convicted of a crime, that the defendants are being sued in connection with their actions in unsuccessfully defending Hayes in that criminal matter, and that a judgment for Hayes in the present civil action would necessarily imply the invalidity of the criminal conviction. Those may be reasonable assumptions. However, those facts have not been alleged in the Complaint.

Instead, the fatal flaw in this Complaint is that it fails to allege facts sufficient to state a 42 U.S.C. § 1983 claim. A basic premise of a § 1983 action is that the defendants must have acted under "color of state law." A public defender, representing a defendant in a criminal action, is not acting under color of state law. Polk County v. Dodson, 454 U.S. 312 (1981). Accordingly, Plaintiff has failed to state a § 1983 claim against these defendants.

Accordingly, I reach the same conclusion as the Magistrate Judge, but via a slightly different path.

Conclusion

Magistrate Judge Clarke's Report and Recommendation (docket # 3) is adopted as modified above. This action is dismissed, without prejudice, for failure to state a claim.

IT IS SO ORDERED.

DATED this 30 day of May, 2008.



Owen M. Panner
United States District Judge